

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

DENNIS G. BAILEY, et. al,

Plaintiffs,

V.

WILLIAM “BILL” BUCK, PETROX ENERGY CORPORATION, ENMARK ENERGY, LLC, JOHN L. HARVEY, HARCO TEXAS, LLC, d/b/a HARCO TEXAS, HARCO EXPLORATION, FIVE STAR EXPLORATION, LLC, JAMES FISCHER, ALAN K. JASPER, SCOTT HEAPE, and MIDWAY EXPLORATION, LLC,

Defendants.

CASE NO. 2:09-CV-166-TJW-CE

REPORT AND RECOMMENDATION

The above-referenced case was referred to the undersigned United States Magistrate Judge for pre-trial purposes in accordance with 28 U.S.C. § 636.

Before the Court is Harco Exploration LLC's and John L. Harvey's (collectively "Defendants") 12(b)(2) Motion to Dismiss for lack of personal jurisdiction. (Dkt. No. 19.) Harco Exploration is a Mississippi limited liability company with its principal place of business in Mississippi. John L. Harvey is a Mississippi resident. Defendants allege that neither Harco Exploration nor John Harvey has established the meaningful contacts, ties, or relations to the State of Texas sufficient for the exercise of personal jurisdiction over either defendant. However, Harco Texas, LLC is also a named defendant in the present suit, and it does conduct business in Texas and has not protested jurisdiction. Plaintiffs allege that John L. Harvey controls both Harco Exploration, LLC and Harco Texas, LLC, and that he is the single member and manager of each of those entities.

The undersigned recommends **DENYING** Defendants' Motion to Dismiss for lack of personal jurisdiction (Dkt. No. 19) without prejudice. Given the facts presented in the briefs and the apparent close relationship between defendants Harco Texas LLC, Harco Exploration LLC, and John L. Harvey, the undersigned recommends that Plaintiffs be allowed to take jurisdictional discovery for sixty days from the date of this report on defendants Harco Exploration LLC, John L. Harvey, and Harco Texas, LLC as to the issue of personal jurisdiction. After the limited jurisdictional discovery, defendants Harco Exploration LLC and John L. Harvey should be allowed to file another motion to dismiss for lack of personal jurisdiction if appropriate.

A party's failure to file written objections to the findings, conclusions, and recommendations contained in this Report within fourteen days after being served with a copy shall bar that party from de novo review by the district judge of those findings, conclusions and recommendations and, except on grounds of plain error, from appellate review of unobjected-to factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc).

SIGNED this 30th day of December, 2009.


CHARLES EVERINGHAM IV
UNITED STATES MAGISTRATE JUDGE